IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

CRL.A.No. 558 of 1998()

C.C.NO.471/1996 OF THE CHIEF JUDICIAL MAGISTRATE, PATHANAMTHITTA

APPELLANT:

JACOB THOMAS, MANAGING PARTNER,
MULAMOOTTIL BANKERS,
PATHANAMTHITTA.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS:

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1. NAZARUDDEEN M.,
PULINIKUMPURAYIDAM HOUSE,
MUKUNDAPURAM P.O.,
KOLLAM.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 06/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.A.No.558 of 1998-B

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Dated this the 6th day of November, 2007

J U D G M E N T

The appellant is the complainant in C.C.No.471/1996 with respect to the offence under Section 138 of the Negotiable Instruments Act in which the accused stands acquitted.

2. The case of the complainant is that on 08/09/1995 the accused obtained a loan of Rs.36,500/- and that on 03/07/1996 the impugned cheque was issued for Rs.36,500/-, dated 11/07/1996, which when presented got dishonoured for want of funds in the account of the accused. Lawyer notice sent was received but no reply was sent nor was the amount paid.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 and 2 and Exts.P1 to P7. The accused himself got examined as DW.1 and got marked Exts.D1 and D2.

4. PW.1 has testified as to the transactions and dishonour. It was brought out from his version that loan was availed by the accused through Darshana Agencies, Karunagappally, for the purchase of television and fridge by the accused. PW.2 the bank manager has proved the fact of dishonour of cheque for want of funds in the account of the accused. It was put to DW.1 in the cross-examination that the cheque was issued at the time of final settlement as the instalments to be remitted fell due. DW.1 has also admitted that he has repaid only six instalments. He has also admitted that the price of the television set is Rs.18,000/- and that of the fridge is Rs.9,000/-. He was also confronted with the loan application and has stated that the signature therein appeared to be similar to his signature. He has admitted that Shahul Hameed was the guarantor. Ext.D1 is the lawyer notice sent to the above Shahul Hameed. It is evident from Ext.D1 lawyer notice that Shahul Hameed was the guarantor for the accused. I find that no purpose will be served by the production of Ext.D1 as it is specifically mentioned in Ext.D1 that the loan has been availed by the accused and the same loan was sanctioned on the basis of the salary certificate of Shahul

Hameed. I find that the court below has erred in acquitting the accused mentioning that the transaction details are not mentioned in the complaint and that the transaction was in between the accused and Darshana Agencies. I find that the evidence adduced in the matter establish beyond reasonable doubt that the accused have availed a loan and not repaid the same and the cheque was dishonoured for want of funds in the account of the accused. Hence, the finding of the court below is set aside. The accused is convicted for the offence under Section 138 N.I.Act. He is sentenced to undergo imprisonment till the rising of the court and to pay compensation of Rs.36,500/- to the complainant and in default to undergo simple imprisonment for three months. The accused shall appear before the Chief Judicial Magistrate, Pathanamthitta, on 05/12/2007 to receive the sentence. The criminal appeal is allowed as above.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.A.No.558 of 1998-B

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J U D G M E N T

6th November, 2007